



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0819; FRL – 9905-16-Region 6]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Environmental
Speed Limit Revision for the Dallas/Fort Worth 8-Hour Ozone Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Texas State Implementation Plan (SIP) for the Dallas/Fort Worth (DFW) ozone nonattainment area to recategorize a local environmental speed limit (ESL) control measure as a transportation control measure (TCM). The EPA is approving this SIP revision because it satisfies the requirements of sections 110 and part D of the Clean Air Act (CAA), and EPA's policy and guidance.

DATES: This rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2010-0819, by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions.
- E-mail: Ms. Carrie Paige at *paige.carrie@epa.gov*.
- Mail: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-0819. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* website is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of

any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, Air Planning Section (6PD-L); telephone (214) 665-6521; e-mail address paige.carrie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

Table of Contents

- I. Background
- II. EPA's Evaluation
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

a. General background

Section 110 of the CAA requires states to develop and submit to EPA a SIP to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS). These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The SIP protects air quality primarily by addressing air pollution at its point of origin; it is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. When a state makes changes to the regulations and control strategies in its SIP, such revision(s) must be submitted to EPA for approval and incorporation into the federally-enforceable SIP. Such regulations and control strategies within the SIP must be specific, permanent, enforceable, and quantifiable.

The SIP under revision in this rulemaking addresses ozone. Ground level ozone is created by a chemical reaction between nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight and high ambient temperatures.¹ Motor vehicle exhaust and industrial emissions, gasoline vapors, chemical solvents and natural sources emit NO_x and VOCs.

Areas that are designated nonattainment for ozone must develop SIPs under Title 1, Part D of the CAA, which includes section 172, “Nonattainment plan provisions,” and subpart 2, “Additional Provisions for Ozone Nonattainment Areas” (sections 181-185). Requirements adopted into the SIP pursuant to Part D of the CAA must also be specific, permanent, enforceable and quantifiable. The DFW SIP includes a variety of NO_x and VOC control strategies, including the ESL, which was adopted and submitted to EPA as a local emission reduction strategy in the DFW SIP. The ESL is a local control measure that reduced speed limits

¹ NO_x and VOC are known as “precursors” to ozone formation.

in the nine counties² from 70 miles per hour to 65 miles per hour and from 65 miles per hour to 60 miles per hour. The technical analysis accompanying the submission of the ESL for approval into the SIP showed a reduction of over 5 tons per day (tpd) of NOx and 0.5 tpd of VOC. The ESL and associated emission reductions were approved into the DFW SIP as specific, permanent, enforceable and quantifiable on October 11, 2005 (70 FR 58978). To date, TCEQ has not removed nor changed speed limits within the SIP-approved ESL measure.

The DFW SIP also includes TCMs, which were incorporated into the DFW SIP on September 27, 2005 as control strategies that are specific, permanent, enforceable, and quantifiable (70 FR 56374). EPA's regulations define a TCM as any measure that is specifically identified and committed to in the applicable implementation plan, including any substitute or additional TCMs that are incorporated into the applicable SIP through the process established in section 176(c)(8) of the CAA, that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. See 40 CFR 93.101.

b. What did the State submit?

On September 16, 2010, the TCEQ submitted to EPA a revision to the DFW SIP narrative³ to recategorize the ESL measure from an individual control strategy to a TCM. Chapter 1 of the revised SIP narrative contains a background section detailing the process of collaboration between the NCTCOG, North Texas Tollway Authority, Texas Department of Transportation, EPA Region 6, and TCEQ to recategorize the ESL to a TCM in the SIP. Furthermore, on June 1, 2010, the EPA sent the TCEQ a letter supporting the recategorization of

² The nine counties are Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant.

³ The narrative provides an accounting and description of the TCM program components; the submittal did not include rule revisions.

the ESL to a TCM in the DFW ozone nonattainment SIP.⁴ Finally, TCEQ provided notice of a public hearing on the SIP revision, giving the public reasonable opportunity to provide oral or written comment on the proposed recategorization during the public hearing.

The September 16, 2010 submittal addresses Chapter 4 of the DFW SIP narrative, which is titled, “Required Control Strategy Elements” and pertains to three specific areas within the chapter: TCMs, the motor vehicle emissions budget (MVEB), and the ESL control measure. The September 16, 2010 submittal specifically makes the following revisions:

- Chapter 4, section 4.2 addresses NO_x and VOC control measures and subsection 4.2.3 is titled, “Transportation Control Measures.” Within subsection 4.2.3, a new paragraph is added titled, “Transportation Control Measures Project.” This new section adds the ESL control measure to the TCM ledger and contains narrative that describes the role of the North Central Texas Council of Governments (NCTCOG).
- Chapter 4, section 4.5 of the DFW SIP is titled, “Motor Vehicle Emissions Budget” and is clarified to reflect the recategorization of the ESL within the approved SIP.⁵
- Chapter 4, section 4.7 of the DFW SIP is titled, “Environmental Speed Limit (ESL) Control Measure Conversion to a Transportation Control Measure (TCM)” and is revised to transfer the responsibility of maintaining emissions reductions associated with the ESL control measure from the TCEQ to the NCTCOG. Emissions reductions currently associated with the ESL would be maintained as TCMs implemented by the NCTCOG

⁴ The June 1, 2010 letter from Guy Donaldson of the EPA to Ms. Kathy Singleton of the TCEQ is part of the TCEQ’s submittal package and is included in the docket for this rulemaking.

⁵ The MVEB is used to determine conformity of transportation plans and programs to the SIP, and is derived from the on-road emissions inventory. Emissions reductions associated with the ESLs to date have been accounted for in the SIP as part of on-road emissions inventories used to develop the MVEB. This recategorization from a local measure to a TCM does not increase or modify the MVEB because there is no net change in emissions reductions from this measure in the on-road emissions inventory the MVEBs are derived from, and TCEQ has thus clarified in Chapter 4, section 4.5 that the MVEB is consistent with the recategorization of the ESL to a TCM. See the DFW 1997 8-hour ozone attainment demonstration SIP (74 FR 1903, January 14, 2009).

and therefore the associated reductions will remain accounted for within the DFW SIP.

While the TCEQ has the ultimate responsibility for ensuring adequate implementation of the SIP, the NCTCOG will be the entity responsible at the local level for implementing all TCMs, including the ESL TCM and ensuring alternative equivalent emission reduction measures are in place should changes to the ESL or other TCM be necessary.

II. EPA's Evaluation

As discussed previously in this rulemaking, a TCM is defined at 40 CFR 93.101, in part, as any measure specifically identified and committed to in the applicable implementation plan and that is a measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. The ESL measure was adopted into the SIP as a control measure in the DFW SIP on October 11, 2005 (70 FR 58978) and remains in the SIP through the time of this rulemaking, and therefore is specifically identified and committed to in the DFW SIP. Furthermore, as previously discussed, the ESL measure was approved into the DFW SIP with associated projected reductions of over 5 tpd of NO_x and 0.5 tpd of VOC. Therefore, the ESL is a measure for the purpose of reducing emissions of air pollutants from transportation sources by changing traffic flow or congestion conditions. The EPA thus finds the ESL meets the definition of a TCM as prescribed by 40 CFR 93.101.

Additionally, TCMs used as a control strategy in a SIP must be specific, permanent, enforceable and quantifiable. As previously discussed, EPA approved the ESL measure and associated emissions reductions into the SIP as meeting these requirements (70 FR 58978). Therefore, because the ESL was previously approved into the SIP as meeting these requirements,

we expect that upon the effective date of this rulemaking the recategorized ESLs will continue to meet these same requirements regardless of their new formal categorization. Furthermore, as previously discussed, while the TCEQ has the ultimate responsibility for ensuring adequate implementation of the SIP, the NCTCOG will be the entity responsible at the local level for implementing all TCMs, including the newly recategorized ESL. Therefore, we expect that upon the effective date of this rulemaking, the recategorized ESL will be implemented by the NCTCOG as the TCEQ had been implementing the measure.

Section 110(l) of the CAA prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. The EPA finds the recategorization of the existing SIP-approved ESL within the approved SIP does not interfere with any applicable requirement of the CAA because the control strategy itself, including associated emission reductions, remain within the SIP and is only being moved from the category of local initiative measures to the category of TCMs. Therefore, because the State is not removing this control strategy from the SIP, nor substantively revising the strategy, we find that EPA's approval of the recategorization of the ESL to a TCM does not violate section 110(l) of the CAA.

Based on these analyses, the EPA finds the ESL recategorization is approvable as a revision to the DFW SIP.

III. Final Action

The EPA is taking direct final action to approve a revision to the DFW SIP that recategorizes the ESL control measure by moving it from its current location in the SIP to Chapter 4 subsection 4.2.3, which is a new paragraph titled, "Transportation Control Measures

Project.” This recategorization adds the ESL to the SIP’s ledger of TCMs. The EPA is approving these SIP revisions because they are consistent with the requirements of sections 110 and part D of the CAA and EPA’s policy and guidance.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication in the Federal Register]** without further notice unless we receive adverse comment by **[FEDERAL REGISTER OFFICE: insert date 30 days from date of publication in the Federal Register]**. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 20, 2013.

Samuel Coleman, P.E.,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In § 52.2270, the second table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by revising the entry for “Approval of the Speed Limits Local Initiative Measure in the DFW nine county area.”

The revision reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * *				
Approval of the Speed Limits Local Initiative Measure in the DFW nine county area. Affected counties are Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, Rockwall	Dallas-Fort Worth	9/16/2010	[Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins]	Recategorized as a Transportation Control Measure
* * * * *				

[FR Doc. 2014-00047 Filed 01/08/2014 at 8:45 am;
Publication Date: 01/09/2014]